

2013 PA Super 275

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| NEIL STEPANOVICH | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| v. | : | |
| | : | |
| JOHN McGRAW AND STATE FARM | : | |
| INSURANCE COMPANY | : | |
| | : | |
| APPEAL OF: STATE FARM MUTUAL | : | |
| AUTOMOBILE INSURANCE COMPANY, | : | |
| IMPROPERLY NAMED AS STATE FARM | : | |
| INSURANCE COMPANY, | : | No. 1239 WDA 2012 |
| | : | |
| Appellant | : | |

Appeal from the Order Entered July 31, 2012,
in the Court of Common Pleas of Allegheny County
Civil Division at No. GD10-16523

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| NEIL STEPANOVICH | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| v. | : | |
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| JOHN McGRAW AND STATE FARM | : | |
| INSURANCE COMPANY | : | |
| | : | |
| APPEAL OF: JOHN McGRAW, | : | No. 1296 WDA 2012 |
| | : | |
| Appellant | : | |

Appeal from the Order, July 31, 2012,
in the Court of Common Pleas of Allegheny County
Civil Division at No. GD10-16523

BEFORE: FORD ELLIOTT, P.J.E., OTT AND MUSMANNO, JJ.

CONCURRING AND DISSENTING OPINION BY FORD ELLIOTT, P.J.E.:

FILED OCTOBER 15, 2013

I join in the Majority's well-reasoned resolution of State Farm's waiver issue and its analysis of the non-application of Rule 411 to the facts of this case. However, I respectfully dissent from the result reached and would instead affirm Judge O'Reilly's grant of a new trial to Stepanovich.

I agree with the Majority that a violation of due process rights requires a showing of prejudice to warrant relief. In this case, Judge O'Reilly, who presided over the trial, stated his reasons for the grant of a new trial on the prejudice issue consistent with Stepanovich's post-trial motions.

Our Court here in Allegheny County accommodated the insurance companies and developed an Order which permitted the insurance company to remain a phantom and directed the trial judge to "structure the trial in such a way as to accomplish this goal."

Some of my colleagues have characterized the phantom insurance company as "another interested party" and permitted a "double teaming" of plaintiff by both counsel for the tort feisor and counsel for the unnamed and undisclosed insurance company. I do not believe that such a procedure comports with due process. I also do not believe that any Appellate Court has directed this procedure.

In this case I did not permit the insurance company to be disclosed and I permitted the "double teaming" by both defense counsel. I could think of no way to not identify the insurance and yet let the jury know why this "double teaming" was going on. Thus I could not structure the trial to accomplish this goal.

After the Motion for Post-trial Relief was filed, I considered at length the Arguments of counsel. I then concluded that I had committed error in the

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way I handled the case and my complicity in denying due process to Stepanovich. Thus I granted a new trial. In that trial the defendant insurance company should be identified.

Trial court opinion, 12/10/12 at 3-4.

We now agree with Judge O'Reilly that the identity of State Farm as a party in this matter does not run afoul of Rule 411. Clearly, as the trial judge who sat through the trial and observed what he believed was prejudicial "double teaming" by appellants, and determining that on re-trial, he would structure the proceedings differently, I defer to his exercise of discretion in this matter.

I would affirm the trial court.